

UNITED STATES DISTRICT COURT  
THE SOUTHERN DISTRICT OF NEW YORK

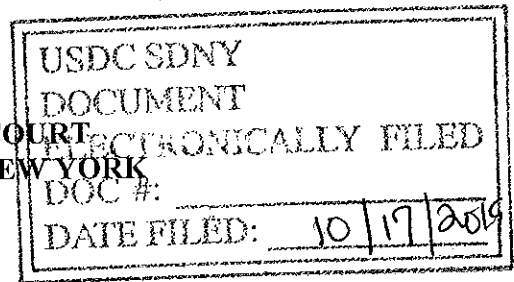
SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

LEK SECURITIES  
CORPORATION, et al.,

Defendants.



Case No. 17-CV-1789 (DLC)

MEMO ENDORSE

*Permit D.*  
*Permit C/S*  
*10/17/19*

**DEFENDANTS PUSTELNIK, FAYYER AND AVALON'S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR JURY TRIAL ON AMOUNT OF DISGORGEMENT**

Defendants Sergey Pustelnik, Nathan Fayyer, and Avalon FA Ltd. ("Defendants") respectfully submit this Memorandum of Law in Support of their Motion for a jury trial with respect to the amount of disgorgement if the SEC establishes liability.

**ARGUMENT**

The SEC has sought the remedy of disgorgement against each of the Defendants. In *Kokesh v. S.E.C.*, — U.S. —, 137 S.Ct. 1635, 198 L.Ed.2d 86 (2017), the Supreme Court held that disgorgement liability was punitive in nature, and thus was a penalty. It is well-established that "an action to recover a statutory penalty generally carries the right to a jury trial." *United States v J. B. Williams Co., Inc.*, 498 F.2d 414, 424 (2d Cir. 1974).

Neither the Second Circuit, nor any other federal circuit court, has ruled on the issue of whether in light of *Kokesh*, a defendant now has a right to jury trial with respect to the disgorgement remedy. Defendants take the position that *Kokesh* changed the law, and that

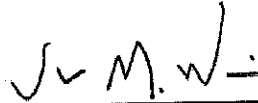
Defendants are thus entitled to a jury trial on the issue of disgorgement which the Supreme Court has determined is a penalty.

**CONCLUSION**

For these reasons, the Court should issue an Order granting Defendants' Motion and awarding them a jury trial on the amount of disgorgement if the SEC is able to prove liability.

Dated: October 15, 2019

Respectfully submitted,



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